

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 04-53803-JRG and  
CANDESCENT TECHNOLOGIES 04-53808-JRG  
CORPORATION, a California (Jointly Administered)  
Corporation,  
Debtor, Chapter 11

ORDER ON FINAL FEE APPLICATION OF PACHULSKI,  
STANG, ZIEHL, YOUNG, JONES & WEINTRAUB P.C.

I. INTRODUCTION

Before the court is the final fee application of debtors' counsel Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C. (PSZYJ&W). Through its final fee application, PSZYJ&W seeks final approval of \$634,423.00 in fees and \$147,269.15 in expenses for the period from June 16, 2004 through June 27, 2005. On July 1, 2005, the court ordered an audit of debtors' counsel's fee request. Having reviewed the audit report and the comments of debtors' counsel, the request for final approval of fees and expenses is granted in part and denied in part as herein stated.

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1 **II. BACKGROUND**

2 The debtors filed for bankruptcy on June 16, 2004. The cases  
3 were relatively straightforward. Substantially all of the debtors'  
4 assets were sold on August 12, 2004 pursuant to an asset purchase  
5 agreement entered into pre-petition. A joint plan of reorganization  
6 was filed on January 26, 2005 and the joint second amended plan of  
7 reorganization was confirmed on June 16, 2005. The confirmed plan was  
8 a liquidating plan that allocated the cash between the debtors and  
9 distributed that cash in accordance with the priorities of the  
10 Bankruptcy Code.

11 **III. FEES**

12 Prior to the submission of the final fee application, the court  
13 approved on an interim basis PSZYJ&W's first fee application in the  
14 amount of \$278,334.00 in fees and \$81,729.55 in expenses. The court  
15 took under submission approval of PSZYJ&W's second interim fee  
16 application in the amount of \$202,411.00 in fees and \$13,970.41 in  
17 expenses. By way of its final application, PSZYJ&W seeks an additional  
18 \$153,975.00 in fees and \$51,569.19 in expenses. The total fees and  
19 expenses for which PSZYJ&W seeks final approval are \$634,423.00 in  
20 fees and \$147,269.15 in expenses for the period from June 16, 2004  
21 through June 27, 2005.

22 The audit report was submitted to the court on October 6, 2005.  
23 The court gave interested parties an opportunity to respond to the  
24 audit. The court received a response from PSZYJ&W, which sought to  
25 clarify and explain aspects of the audit report. The audit reveals  
26 a difference of \$331.00 between the requested amount and the computed  
27 amount. The discrepancy is a result of the activity hours not  
28 equaling the entry hours. [See "Recomputation of Fees and Expenses,"

1 page 2; Exhibit A.] PSZYJ&W acknowledges that \$750 of fees billed for  
2 Ms. Tenaka-Delgado to observe the sale of assets at auction,  
3 questioned by the audit report, are appropriate to delete. PSZYJ&W  
4 further agrees to reduce its fees by a total of \$10,692.15 and  
5 requests an award of \$623,730.85 in fees and \$147,269.15 in expenses.

6 In relation to the remaining fees, the court has a duty to review  
7 each request and determine whether the requirements of Bankruptcy Code  
8 § 330 are met. In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833,  
9 840-45 (3rd Cir. 1994); In re Berg, 268 B.R. 250, 257 (Bankr. D. Mont.  
10 2001). Section 330 of the Bankruptcy Code provides that the court may  
11 award to a professional person employed under §§ 327 or 1103  
12 reasonable compensation for actual, necessary services rendered and  
13 reimbursement of actual, necessary expenses. In determining the  
14 amount of reasonable compensation, the court considers the nature, the  
15 extent, and the value of such services, taking into account all  
16 relevant factors. 11 U.S.C. § 330(a)(3). Where some of the services  
17 provided were not likely to benefit the estate or were not necessary,  
18 the court may award less compensation than requested. In re Smith,  
19 317 F.3d 918, 926 (9th Cir. 2002).

20 In reviewing the audit report and response of PSZYJ&W, the court  
21 concludes the following.

22 **A. Fees Related to the Plan and Disclosure Statement Will Be**  
23 **Reduced.**

24 As set forth in the second interim and final fee applications,  
25 the fees spent on the plan and disclosure statement total \$115,371.00.  
26 The second interim fee application narrative states that PSZYJ&W  
27 worked with the creditors' committee and the indenture trustee to  
28 formulate a plan that provided adequate committee control post-

1 confirmation, assured a smooth process for addressing the public debt,  
2 and provided timing issues related to the Bermuda company.

3       On closer look, the court believes much of the fees incurred are  
4 not reasonable given the circumstances of the case. The assets of the  
5 debtors were sold shortly after the bankruptcy case was filed and the  
6 joint plan merely distributed the cash in a similar manner as would  
7 be distributed in a chapter 7 bankruptcy case. However, the debtors  
8 proposed a liquidating plan of reorganization that had a 121-page  
9 disclosure statement that did not provide creditors with the basic  
10 information necessary to vote on the plan. As the court noted at the  
11 hearing to approve the first disclosure statement, that disclosure  
12 statement was approximately 100 pages too long and attempted to alter  
13 certain provisions of the Bankruptcy Code. Moreover, the creditors'  
14 committee represented 80% of the general unsecured debt, so the vast  
15 majority of the creditors already knew the pre-petition history of the  
16 debtors that was chronicled in nearly 30 pages of the disclosure  
17 statement. The court eventually approved for dissemination to  
18 creditors a 40-page disclosure statement that cost the debtors  
19 approximately \$10,500 to revise.

20       The court had the auditor take the entries related to the plan  
21 and disclosure statement and organize them into particular categories.  
22 [See Exhibit P.] The audit sets forth that \$113,582.00 in fees were  
23 incurred with respect to drafting and revising the various joint plans  
24 and disclosure statements. [See Exhibit P-2.]

25       Attorney Robert Orgel spent nearly 214 hours and \$112,306.25 in  
26 fees drafting and revising a liquidating plan of reorganization and  
27 the accompanying disclosure statement. As noted above, the first  
28 proposed disclosure statement was three times longer than the

1 disclosure statement eventually approved by the court and basically  
2 incomprehensible. Mr. Orgel is an accomplished bankruptcy attorney  
3 and charges \$525 an hour for his services. The court finds that 80  
4 hours of Mr. Orgel's time, at a cost of \$42,000, would have been more  
5 than sufficient time for such an experienced attorney to complete the  
6 drafting and revision of the liquidating plan of reorganization and  
7 accompanying disclosure statement.

8 Consistent with the above, the court will deny \$70,306.25 in fees  
9 for the drafting and revising of the various plans and disclosure  
10 statements.

11 **B. A Review of Clumped Entries Will Result in a Partial Denial**  
12 **of Fees.**

13 The Bankruptcy Court for the Northern District of California  
14 maintains Guidelines for Compensation of Professionals.<sup>1</sup> The audit  
15 report highlights \$101,436.00 in fees that are clumped billing  
16 entries. [See Exhibit C.] Under Guideline 14, "If a number of  
17 separate tasks are performed on a single day, the fee application  
18 should disclose the time spent for each such task (i.e., no "grouping"  
19 or "clumping")."

20 "Courts have refused repeatedly to approve unitemized  
21 disbursements for services that are lumped together in a single entry,  
22 because such action inhibits the court from estimating the  
23 reasonableness of the individual services and their value to the  
24 debtor's estate." In re Ward, 190 B.R. 242, 246 (Bankr. D. Md. 1995);  
25 In re Poseidon Pools of America, Inc., 180 B.R. 718, 731 (Bankr.  
26 E.D.N.Y. 1995).

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27 <sup>1</sup> The District's Guidelines for Compensation and Expense Reimbursement of Professionals  
28 and Trustees are available on the District's Web site at <http://www.canb.uscourts.gov>.

1 In its response, PSZYJ&W has provided the court with supplemental  
2 billing entries showing the time spent for each task. While the court  
3 is satisfied that the separation of the entries reflects the amount  
4 of time spent on each task, the court is concerned that in the initial  
5 fee applications, 16% of the fees were listed in time entries that did  
6 not specify the time allocation for each task. The failure of PSZYJ&W  
7 to provide the allocation of time in its original applications  
8 prevented the court from reviewing the fees properly. Thus, a 5%  
9 general reduction in fees related to clumped entries is warranted.  
10 As a result, and taking into account the prior reduction related to  
11 drafting and revising the plan,<sup>2</sup> the court denies \$4,012.00 in fees.

12 **C. Administrative/Clerical Activities by Paraprofessionals and**  
13 **Professionals Warrant Fee Reductions.**

14 The audit report highlights a number of activities by  
15 professionals and paraprofessionals that appear to be clerical in  
16 nature. [See Exhibits G-1 and G-2.] According to Guideline 18:

17 18. Administrative Tasks - Time spent in addressing, stamping  
18 and stuffing envelopes, filing, photocopying or  
19 "supervising" any of the foregoing is not compensable,  
whether performed by a professional, paraprofessional or  
secretary.

20 Debtors' counsel's employment and retention is to be in  
21 accordance with § 330 of the Bankruptcy Code and the local guidelines  
22 of the court. Clerical services are overhead expenses and are not  
23 compensable under § 330(a). Sousa v. Miguel (In re United States

24 \_\_\_\_\_  
25 <sup>2</sup> The entries deducted from the clumped entries are the time entries of Orgel also  
26 listed on Exhibit P-2: 9/14/04 (2.55 hours), 9/16/04 (4.50 hours), 9/21/04 (2.05 hours),  
27 9/22/04 (2.90 hours), 9/28/04 (5.10 hours), 9/29/04 (2.45 hours), 9/30/04 (1.70 hours),  
10/4/04 (2.05 hours), 10/5/04 (.50 hours), 10/5/04 (3.80 hours), 10/18/04 (2.10 hours),  
10/22/04 (1.10 hours), 11/8/04 (3.60 hours), 11/24/04 (1.20 hours), 12/27/04 (1.30 hours),  
28 12/29/04 (.85 hours), 1/9/05 (2.07 hours), and 1/20/05 (.55 hours). These entries total  
40.37 hours and \$21,194.25 in fees.

1 Trustee), 32 F.3d 1370, 1374 (9th Cir. 1994). Services such as  
2 filing, assembling or compiling documents, organizing files,  
3 calendaring dates, making copies, faxing or transmitting, moving  
4 records, to name a few, are inherently clerical.

5 Debtors' counsel responds that the time listed for Mr. Orgel was  
6 for legal decisions that could not and should not have been delegated.  
7 The time entries for Ramon Naguiat relate to Mr. Naguiat filing the  
8 petitions to insure that they were filed in a certain order and drew  
9 the same judge. Since there were complications in this process, that  
10 decision was worthwhile to the debtors. Regarding the time entries  
11 for paraprofessional Jeffries, PSZYJ&W asserts that the time billed  
12 for Ms. Jeffries to modify documents to insure that they strictly  
13 comply with the efilings requirements of this court is appropriate.

14 However, a review of the time entries discloses a number of  
15 entries that are clerical in nature. For example, sending messages  
16 to staff to arrange calls and follow up with Federal Express [see  
17 Exhibit G-2: 6/16/04, 6/27/04 Orgel], calendaring dates [see  
18 Exhibit G-1: 4/18/05 Jeffries; Exhibit G-2: 12/3/04 Orgel], telephone  
19 calls with Federal Express regarding returned documents [see Exhibit  
20 G-1: 7/6/04, 7/8/04 Jeffries], preparing chambers copies of documents  
21 [see Exhibit G-1: 6/21/04, 7/26/04 Jeffries], updating service lists  
22 [see Exhibit G-1: 7/2/04, 7/26/04 Jeffries], or preparing labels [see  
23 Exhibit G-1: 6/24/04, 7/20/04 Jeffries], to name a few.

24 Because many of the entries in Exhibits G-1 and G-2 are clerical,  
25 the court will reduce the fees for this category by 50%, amounting to  
26 a reduction of \$4,374.66 for paraprofessionals and \$3,596.00 for  
27 professionals, for a total reduction of \$7,970.66.

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The audit report highlights certain travel entries. [See Exhibit F.] According to Guideline 17:

In its response, debtors' counsel states that it already has billed \$13,335.00 in unbilled travel time and the remaining requested fees of \$9,952.75 total less than 43% of all travel related and should be allowed.

**E. All Other Fees Requested Are Approved.**

#### IV. EXPENSES

The court has reviewed the expense categories outlined in the audit report and concludes that no reductions are warranted.

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STANG, ZIEHL, YOUNG, JONES & WEINTRAUB P.C.



1 **V. CONCLUSION**

2 The court approves on a final basis fees in the amount of  
3 \$532,831.94, having denied \$90,898.91 in fees. Expense reimbursement  
4 is approved in the amount of \$147,269.15, the court having allowed all  
5 expenses. Total fees and expenses approved on a final basis are  
6 \$680,101.09. All fees that are denied are done so on a final basis.

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8 DATED: \_\_\_\_\_

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11 JAMES R. GRUBE  
12 UNITED STATES BANKRUPTCY JUDGE  
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Case Nos. 04-53803-JRG and 04-53808-JRG  
(Jointly Administered)

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: ORDER ON FINAL FEE APPLICATION OF PACHULSKI, STANG, ZIEHL, YOUNG, JONES & WEINTRAUB P.C. by placing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_ at San Jose, California.

\_\_\_\_\_  
LISA OLSEN

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